

EX PARTE OR LATE FILED

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December 16, 1996

EX PARTE

Mr. William Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

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DEC 16 1996

Federal Communications Commission
Office of Secretary

Re: CC Docket No. 96-149

Dear Mr. Caton:

Today, on behalf of Bell Atlantic, Jim Cullen, Edward D. Young, III, Ed Shakin and I met with Chairman Reed Hundt and his Senior Legal Advisor, John Nakahata, to discuss the above captioned docket. A copy of the hand-out used in the meeting is attached.

Please enter this letter into the record as appropriate.

Sincerely,



Attachment

cc: R. Hundt
J. Nakahata

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DOCKET 96-149 ISSUES

- **Section 272(e)(4) authorizes BOCs to provide in-region interLATA facilities and services to their long distance affiliate so long as the same service and facilities are offered to non-affiliated carriers.**
 - Competition and customers are harmed when regulators impose artificial controls that raise a new competitors' costs. Allowing BOCs to provide network services and facilities will take advantage of economies of scope and keep costs low.
 - Customers will also benefit from allowing BOCs to make efficient use of any available existing capacity.
- **Section 271(e)(1) forbids the big three interexchange carriers from advertising or otherwise jointly marketing long distance service in combination with LEC resold local service.**
 - Debasement of this rule would thwart the will of Congress and allow the largest incumbents the ability to leverage below cost resold local service into an unfair marketing advantage.
 - Once a BOC receives authorization to provide in region long distance service, all competitors are allowed to market jointly.
- **Section 272(g)(2) gives a BOC the right to market and sell the long distance services of its affiliate.**
 - BOCs may exercise this right without need for third party intermediaries, and may do so on inbound and outbound calls.
 - Customers benefit from one-stop shopping alternatives, and competition benefits because all carriers will have ability to jointly market multiple services.
- **There is no need for regulations that would prevent a long distance affiliate of a BOC from purchasing administrative services from an affiliated service organization that also provides services to the BOC**
 - Section 272(b)(1) "operate independently" requirement is informed by the specific rules that follow. It cannot be an invitation for a wholesale importation of new rules that appear nowhere else in the Act.
 - Section 272(b)(3) merely requires no sharing of officers, directors and employees. The provision says nothing about the purchase of administrative services from a common affiliated source.

ESP EXEMPTION ISSUES

- **The Commission should address the problem of ESP costs and charges as part of its upcoming access reform NPRM.**
- **As part of its review, the Commission should deal with the problem of network congestion. Even if technological solutions are developed, under the current system, ESPs have no economic incentive to migrate to alternative technologies.**
- **Allowing LECs to charge a usage-based rate sends the correct economic signal for efficient use of the network.**
- **Eliminating the exemption removes hidden subsidies that have no remaining legitimate policy basis.**

**THE COMMISSION SHOULD NOT ALLOW NEEDLESS REGULATION TO DELAY
NEW FACILITIES-BASED LONG DISTANCE COMPETITION**

There should be no 214 construction permit requirement for BOC construction of long distance facilities -- The Commission, on its own initiative, is required to forbear from enforcement of any provision that is unnecessary when such forbearance will promote competitive market conditions. (Section 10) Requiring a second public interest test for section 214 construction permits is duplicative regulation with respect to a BOC affiliate's in-region long distance service. Under section 271(d)(3)(C), Bell companies already must demonstrate to the FCC that their long distance service is in the public interest. Removing the duplicative application requirement will allow facilities-based competition to develop faster and will thereby "enhance competition." (Section 10(b)) In addition, such forbearance is consistent with Section 402 (b)(2)(A) of the new Act, which requires that "the Commission shall permit any common carrier to be exempt from the requirements of section 214 ... for the extension of any line." Implementation of this provision should eliminate the section 214 construction permit requirement generally, and in particular for construction of facilities that will extend local networks to provide long distance service

Allow BOCs to begin immediate construction of long distance networks at their own risk -- While the Commission should move quickly to issue an order to remove the section 214 requirement, the Commission should issue an order *now* allowing construction to proceed immediately, with the BOCs assuming the risk of a negative determination in the 271 application. Chairman Hundt has already recognized that with respect to price cap companies, "Section 214 regulation is largely unnecessary as a consumer protection device." (Chairman Hundt's Responses to Questions of the House Subcommittee on Telecommunications and Finance (Mar. 27-29, 1996)) Any company that begins construction would be required to account separately for any such construction, so that a subsequent negative regulatory ruling would be a risk to shareholders, not to customers of other regulated services. The only parties that are advantaged by a delay in construction are the incumbent interexchange carriers that could continue to raise rates and collect those charges in advance of increased competition.